

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

GARY C. LIZALEK,

Plaintiff,

v.

Case No. 06-C-1109

INVIVO CORPORATION, and
DAVID MOLYNEAUX,

Defendants.

**ORDER GRANTING PLAINTIFF'S PETITION TO PROCEED
IN FORMA PAUPERIS**

On October 25, 2006, the plaintiff in this action, Gary C. Lizalek ("Lizalek"), filed a complaint in which he names Invivo Corporation and David Molyneaux as the defendants. Accompanying his complaint was a petition to proceed in forma pauperis.

The federal in forma pauperis statute, 28 U.S.C. § 1915, is designed to ensure indigent litigants meaningful access to the federal courts. *Nietzke v. Williams*, 490 U.S. 319, 327 (1989). To authorize a litigant to proceed in forma pauperis, the court must first determine that the litigant is unable to pay the costs of commencing the action. 28 U.S.C. § 1915(a). Second, the court must determine that the action is neither frivolous nor malicious, does not fail to state a claim, and does not seek money damages against a defendant immune from such relief. 28 U.S.C. § 1915(e)(2). In making the latter determination, the court must give a pro se plaintiff's allegations, "however inartfully pleaded," a liberal construction. *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

In his petition and affidavit for leave to proceed in forma pauperis, Lizalek states that he is currently unemployed. He further states that he is married and has two dependent children. However, he states that the amount of support provided to each child per month is “undetermined.” He states that he has \$640.69 in a checking/saving account, and it appears that he has no other assets. Lizalek avers that his total monthly income is \$500 (although he does not state the source of such income), and he has a \$300.00 monthly credit card payment. Although he avers that neither he nor his spouse owns an automobile, he also avers that he makes a \$200.00 monthly car payment. Thus, it is unclear whether Mr. Lizalek actually owns an automobile. Yet, be that as it may, I am satisfied that Mr. Lizalek is indigent for purposes of the in forma pauperis statute. That is, given his monthly income, monthly expenses, and the fact that he has two dependent children, I am persuaded that he cannot pay the \$350 filing fee to commence this action.

Liberally construed, Lizalek’s complaint appears to assert claims for, among other things, religious discrimination, harassment, retaliation, and unlawful termination. And, at least at this early stage of the proceedings, I cannot say that the allegations in Lizalek’s complaint are subject to dismissal for being frivolous or malicious, or for failing to state a claim. *See* 28 U.S.C. § 1915(e)(2). Consequently, his petition to proceed in forma pauperis will be granted.

NOW THEREFORE IT IS ORDERED that the plaintiff’s petition to proceed in forma pauperis be and hereby is **GRANTED**.

IT IS FURTHER ORDERED that the United States Marshal shall serve a copy of the complaint, the summons, and this order upon the defendants pursuant to Federal Rule of Civil Procedure 4.

The plaintiff is hereby reminded that he is required to send a copy of every paper or document he files with the court to the opposing parties or to their attorney(s). The plaintiff should also retain a copy of each document for his own files. If he does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents. The court may disregard any papers or documents which do not indicate that a copy has been sent to each defendant or to each defendant's attorney.

In addition, the parties should notify the Clerk of Court's Office of any change of address. Failure to do so could result in orders or other information not being delivered in a timely manner, thus affecting the legal rights of the parties.

SO ORDERED this 30th day of October 2006, at Milwaukee, Wisconsin.

s/ William E. Callahan, Jr.
WILLIAM E. CALLAHAN, JR.
United States Magistrate Judge